THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.1942 of 1994

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DATE: 23-02-2006

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Between:

Vundavalli Vijaya Murthy,

S/o Suryaprakasa Rao,

Aged 40 years, resident of

Sivakodupalem, Rajolu mandal,

East Godavari District.

…Petitioner.

And

1. Superintending Engineer,

Irrigation & Power, R & B,

Dauleshwaram Circle,

Dauleshwaram, East Godavari

District and 3 others.

…Respondents.

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ORDER:

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Aggrieved by the proceedings dated 29.01.1994 in Proc.No.M.1/11/C/G.H/327 passed by the first respondent-Superintending Engineer, Irrigation and Power,

R & B, East Godavari District, the present writ petition has been filed.

2. The case of the petitioner is that the first respondent granted leasehold rights to the father of the petitioner for planting 528 Coconut trees on 30.09.1961 from kilometers 40/02 to 41/0 of Vasista Left Floor Bank for a period of 99 years. His father planted 528 Coconut trees, most of which became fruit bearing. As per the terms of the agreement, the lease was given the right to replace the trees, which might die within a period of two years only and thereafter he has no right to plant fresh trees. In view of the conditions contained in the lease, his father, during his lifetime, strictly adhered to the terms of the said licence though 46 trees died and he did not plant any new trees. His father died in the year 1976, thereafter the name of the petitioner was entered in the records of the respondent as a successor in interest. It is stated that the petitioner also did not plant any new trees to replace the dead trees in view of the terms and conditions of the agreement.

3. It is further stated that in the year 1986, the District Collector, with a view to help the persons belonging to the weaker sections, undertook a scheme of granting tree pattas to the persons of the said communities on the flood banks to enable them to eak out their livelihood and in view of the said scheme, number of persons belonging to the weaker sections planted trees without even obtaining tree patts hoping that their representations for grant of tree pattas will be considered by the authorities favourably. Among them, one Mr.Parsi Paramanandam, resident of Sivakodupalem planted 46 trees in the area for which the licence was granted in the name of petitioner's father. It is also the case of the petitioner that on complaint dated 12.12.1987 by some harijans that he violated the terms and conditions of the licence, the said Paramanandam submitted an explanation in writing to the Executive Engineer wherein he stated that he planted trees in the area for which licence was granted to the petitioner's father and no fresh trees are planted either by thesaid Paramanandam or by himself. It is also the case of the petitioner that due to political influence and factions in the village, the sarpanch of the village got the proceedings initiated by the second respondent to cancel the lease. Accordingly, the second respondent issued proceedings in notice No.NC3/8 dated 03.02.1988 and NC3/32C dated 18.04.1988 cancelling the licence on the

ground of violation of terms and conditions of the lease. Questioning the same, the petitioner filed O.S.No.2 of 1989 on the file of the Subordinate Judge, Rajole, seeking declaration of the said notice as illegal and without jurisdiction. The petitioner also filed I.A.No.5 of 1989 under Order 39 Rule 1 C.P.C. seeking injunction restraining the respondents therein from interfering with his possession and enjoyment. The same was granted on 24.04.1989. On behalf of the respondents also I.A.No.113 of 1989 was filed under Section 34 of the Arbitration Act contending that the court below has no jurisdiction to deal with the matter, as there was an arbitration clause in the agreement to decide the disputes consequent to violation of the conditions of the lease. The said I.A. was dismissed on 24.04.1989. Aggrieved by the same the Department filed C.M.A.No.941 of 1989 and C.M.A.No.1009 of 1989 in this court. A Division Bench of this Court allowed C.M.A.No.941 of 1989 and dismissed C.M.A.No.1009 of 1989. Aggrieved by the same, the petitioner filed a S.L.P in the Supreme Court. Since no interim orders were passed in the said S.L.P. by virtue of the orders passed in C.M.A.No.941 of 1989, the first respondent proceeded with the matter and issued notice in letter No.MC.1/11/C/G.H/64M dated 07.01.1994 stating that an enquiry will be conducted on 17.01.1994 at 10-30 a.m. Ultimately, the first respondent passed the impugned order cancelling the lease involved and taken the possession of the trees.

4. Though the learned counsel for the petitioner has raised several grounds in the writ petition, he is confined mainly to one ground i.e., violation of principles of natural justice and sought for the matter to be remitted back to the authorities concerned for fresh consideration after giving opportunity to both the parties and pass appropriate orders.

5. He submitted that the first respondent though issued notices earlier which were not served on the petitioner, but a notice was issued to the petitioner to attend the enquiry on 17.01.1994 at 10-30 a.m. In response to the same, one Vundavilli Brahmaji Rao of Sivakodupalem sent a telegram dated 15.01.1994 to the first respondent informing that Vundavilli Vijaya Murthy (petitioner herein) was out of station and was expected after 25.01.1994, hence, the date of enquiry may be extended. Accordingly, the date of enquiry was fixed on

28.01.1994 and thereafter a notice was issued to the petitioner informing that on 28.01.1994 as the Superintending Engineer had to attend Zilla Pranalika Abhivridhi sameeksha Mandali meeting, the enquiry was finally posted to 29.01.1994. In response to the said notice, the petitioner attended the enquiry on 29.01.1994 and submitted a representation wherein he stated that since the matter is pending before the Supreme Court, he sought an adjournment of the matter till February 1994.

6. It is also the case of the petitioner that without considering the said representation, simply the first respondent passed the impugned order stating that since the petitioner did not attend the enquiry as intimated to him, it is a deliberation on the part of petitioner in avoiding attending enquiry and that he has no material to adduce during the enquiry. Therefore, the first respondent passed the impugned order.

7. On behalf of the petitioner it is contended that it is not correct to say on the part of the first respondent that the petitioner did not attend the enquiry. As could be seen from the impugned report, petitioner attended the office of the first respondent on 29.01.1994 and he was informed personally to attend the enquiry at 3-00 p.m. on the same day i.e., 29.01.1994 and he was agreed to the same. But the impugned order further says that the petitioner did not attend the enquiry as intimated to him. Therefore, it shows that it is not correct on the part of the first respondent to say that the petitioner did not attend the enquiry. The petitioner also stated that having been attended the enquiry he also submitted a representation on 29.01.1994 wherein he requested the first respondent to adjourn the matter till February 1994 on the ground that the matter is pending before the Supreme Court. Therefore, he contended that there is utter violation on the part of first respondent in not considering the representation and not being given opportunity to the petitioner while considering the matter. He stated that the Supreme Court on 28.01.1994 dismissed the S.L.P.

8. On the other hand, on behalf of respondent learned Government Pleader submitted that though the petitioner, in response to the notice issued by the

first respondent, attended the office of the first respondent and submitted representation, but he could not participate in the enquiry. But the authority did not consider the representation and also did not deny the factum that the petitioner attended the office. Thereby it appears that the petitioner having not been provided sufficient opportunity to protect his interest. Therefore, he submitted that the petitioner may be given an opportunity to protect his interest before the authority concerned and that it may happen only in the event of remitting the mater to the authority concern.

9. As could be seen from the impugned order the Superintending Engineer is the arbitrator according to clause 11 of the agreement. Though first respondent issued notice to the petitioner on 07.01.1994 asking him to attend the enquiry on 17.01.1994 at 10-30 a.m., a telegram was received in the office of the first respondent dated 15.09.1994 that the petitioner is out of station and the matter may be adjourned. Therefore, the date of enquiry was adjourned to 28.01.1994 and again from 28.01.1994 to 29.01.1994. To that effect a notice was issued to the petitioner fixing the enquiry on 29.01.1994 on the ground that on 28.01.1994 the first respondent had to attend Zilla Pranalika Abhivridhi Sameeksha Mandali Meeting. On 29.01.1994 the petitioner attended the office, but he was informed personally to attend the enquiry at about 3'0 clock, but he did not attend the enquiry. It is submitted by the learned counsel for the petitioner that having been attended the enquiry on 29.01.1994 the petitioner also submitted a representation narrating facts of the case and sought for time till February 1994. The representation was not at all considered and the said fact was not denied in the counter-affidavit filed by the respondents. In view of the same it is a case where the authority first respondent issued the impugned order without giving proper opportunity to the petitioner and without considering the material on record. In view of the same it can be said that the impugned order is in violation of principles of natural justice. Therefore, in my view the impugned order is liable to be set aside.

10. Accordingly, the impugned order is set aside and the matter is remitted back to the first respondent to pass appropriate orders afresh by giving opportunity to both the parties enabling them to produce relevant material, as

expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this order. Till such time *status quo* as on today with regard to the possession of the trees shall be maintained.

11. The writ petition is, accordingly, disposed of. No costs.

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G.CHANDRAIAH, J.

Date: 23rd February 2006.

BSB